

## **HALO v. PULSE (S. Ct. 2016)**

- One's view of the *Halo* decision can depend on whether, e.g., troll elimination/defense or enhancing damages (adding to the "value" of patents) is the priority.

### Background

- In re *Seagate* (Fed. Cir. 2007)
    - 2 part "willfulness" test - patent owner must show:
      - "objective willfulness" (objective recklessness) and
      - "subjective willfulness"
  - Halo (Dist. Ct. and Fed. Cir.)
    - Plaintiff failed to show that defendant was objectively reckless
- ### Supreme Ct.'s Halo Decision
- ....Seagate's test, particularly the objective prong "is unduly rigid, and it impermissibly encumbers the statutory grant of **discretion** to district courts."
    - The Seagate test "can have the effect of insulating some of the worst patent infringers from any liability for enhanced damages."
    - Court rejected the notion that the existence of a defense at trial (even if unsuccessful) "insulates the infringer from enhanced damages, even if he [was unaware of the defense prior to trial]."
      - "[C]ulpability is generally measured against the knowledge of the actor at the time of the challenged conduct." [Emphasis added]
    - Court also stated that enhanced damages:
      - are to be governed by a "preponderance of the evidence" standard, rather than "clear and convincing."
      - should be reviewed "for abuse of discretion" and not *de novo* .
      - are to be applied in "egregious," rather than "garden variety" cases – Consistent with nearly two centuries of precedent (i.e., nothing new...)
    - Remanded consistent with this opinion